

RESOLUTION NO.

Resolution of the Planning Commission of the City of San Jose **denying** a Conditional Use Permit to use certain real property described herein to allow for a project located at 148 East San Carlos Street on a 0.08-gross-acre site in the CG Commercial General Zoning District for the operation of a fast-food eating establishment with 24 hour use, daily.

FILE NO. RCP 03-021

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSE:

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San Jose Municipal Code, on September 16, 2003, an application (File No. RCP03-021) was filed for a Conditional Use Permit for the purpose of operation of an eating establishment with after-midnight use (24 hour use) daily, on that certain real property (hereinafter referred to as "subject property"), situated in the CG Zoning District, located at 148 East San Carlos Street, San Jose, CA and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, this Planning Commission has reviewed and considered the environmental impacts of this project which were addressed by a Final EIR entitled, "Downtown Strategy Plan Supplemental EIR, Resolution No. 68839," and findings were adopted on April 27, 1999, by the City of San Jose City Council; and

WHEREAS, pursuant to and in accordance with Chapter 20.44 of Title 20 of the San Jose Municipal Code, this Planning Commission conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, said hearing was conducted in all respects as required by the San Jose Municipal Code and the rules of this Planning Commission;

NOW, THEREFORE:

The Planning Commission determines that the following are the relevant facts regarding the proposed project:

1. This is a Conditional Use Permit (CUP) to allow a “fast food” eating establishment to have 24 hour operations, daily.
2. The project site is approximately 0.20 acres and is located in the Commercial General (CG) Zoning District.
3. The site has been used a fast food operation for the past 20 years.
4. A Conditional Use Permit is required for the operation of an eating establishment with after-midnight use in the CG Zoning District.
5. The site is subject to the hours of operation contained in RCP99-07-013; 24 hour operation Sunday through Wednesday, and 3:00a.m. through 1:00a.m. Thursday through Saturday
6. The project site is designated Core Area on the San Jose 2020 General Plan Land Use/Transportation Diagram.
7. The Core Area designation provides that restaurants, bars and nightclubs may be located within the downtown Core Area, provided that such uses do not adversely impact existing or planned uses or conflict with other San Jose General Plan objectives. Based on experience at the site, the proposed 24 hour use is likely to impact other sensitive uses in the surrounding area, including residential uses.
8. The environmental impacts of this project were addressed by Final Supplemental EIR entitled, "Downtown Strategy Plan," adopted by City Council Resolution No. 68839 on April 27, 1999.
9. The subject site is surrounded by a variety of commercial and residential uses. Residential uses are located within 50 feet of the project site.
10. The subject site is located in the Downtown Parking Management Zone. Based on the parking provisions for the Downtown Parking Management Zone (Municipal Code, Section 20.90.510), parking is not required for eating, drinking, and entertainment establishments.
11. The project is not consistent with the City Council 24-hour Use Policy, specifically the project is located near residential uses and is a “fast food” eating establishment.
12. The “Period of Concern” as defined by the San Jose Police Department is 1:00p.m. through 3:00a.m. Police do not support operations at the site during the “Time Period of Concern”.

13. The project does not include any exterior changes to the structure.

This Planning Commission concludes and finds, based upon an analysis of the above facts, that:

1. The project does not conform to the San Jose 2020 General Plan in that it proposes the operation of a 24 hour eating establishment within the Downtown Core Area, which will adversely impact surrounding uses. The increased hours of operation will negatively impact surrounding businesses and residences because of increased crime such as graffiti, noise, and assaults. The use is therefore not consistent with the General Plan.
2. This project is not consistent with the City Council Policies on 24-Hour Use; in that experience with the current hours of operation indicates that the proposed, expanded 24 hour use will negatively impact the surrounding uses
3. The proposed use complies with the parking provisions of Downtown Parking Management Zone, as described in Municipal Code, Section 20.90.500.

Finally, based upon the above-stated analysis and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location will:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area because the proposed 24 hour use is not consistent with residential and commercial uses of the surrounding area. In addition, the San Jose Police Department feels that 24 hour operations are not appropriate at the proposed location do not support the proposal; and
 - b. Impair the utility or value of property of other persons located in the vicinity of the site because the 24 hour use at the existing eating establishment will alter and diminish the value of adjacent restaurants and businesses, raise new safety concerns, and create impacts because of graffiti, noise, and Police problems; and
 - c. Not be detrimental to public health, safety or general welfare because the potential environmental impacts of the project were addressed by the final supplemental environmental impact report entitled, "Downtown Strategy Plan EIR" (Resolution No. 68839); and
2. The proposed site is adequate in size and shape to accommodate the development features necessary to integrate said use with the uses in the surrounding area because the project site already includes the improvements needed for the proposed uses which are compatible with the uses in the surrounding area; and
3. The proposed site is adequately served by highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate in that the proposed project will not need to provide offsite improvements to the existing roadway network or transit facilities.

4. The proposed site is not adequately served by other public or private service facilities as are required in that the scale of the project will draw needed police resources from other areas that would translate to the need to expand police services to maintain existing levels of coverage.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purposes specified above is hereby denied.

DENIED this 19th day of November, 2003, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

Chairperson

ATTEST:

Stephen M. Haase, Secretary

Deputy

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.